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# भारत का राजपत्र The Gazette of India



असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 10th August, 2001:—

I

BILL No. LIV OF 2000

*A Bill further to amend the Constitution of India.*

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2000.

(2) It shall come into force at once.

2. In the Eighth Schedule to the Constitution of India, the existing entry 18 shall be renumbered as entry 19 and before entry 19 as so renumbered, the following entry shall be inserted, namely:—

“18. Tulu.”

Short title and  
commence-  
ment.

Amendment of  
the Eighth  
Schedule.

**STATEMENT OF OBJECTS AND REASONS**

At present, 18 languages are recognised by the Constitution under Eighth Schedule. Tulu is one of the Dravidian languages of rich culture and therefore it deserves an equal place among the languages like Telugu, Malayalam, Tamil and Kannada. The language and the culture of Tulu is quite resourceful. Tulu has also a script of its own.

In view of the above, it is considered necessary to include Tulu language in the Eighth Schedule of the Constitution and hence this Constitutional Amendment Bill.

K. C. KONDAIAH

## II

## BILL No. II 2001

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2000.

Short title and  
commence-  
ment.

(2) It shall come into force at once.

2. For article 200 of the Constitution, the following article shall be substituted, namely,—

Amendment  
of article 200.

“200. When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a bicameral House has been passed by both the Houses of the Legislature of that State, it shall be presented to the Governor and the Governor shall, within fourteen days of such presentation of the Bill other than the Money Bill, declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President.”

Assent to Bills.

3. For article 201 of the constitution, the following article shall be substituted namely:—

Amendment of  
article 201.

“201. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or he withholds assent therefrom within fourteen days from the date of receipt of such a Bill by the President.”

Bills reserved  
for considera-  
tion.

### STATEMENT OF OBJECTS AND REASONS

At present, there is not time limit for the Governor or the President as the case may be to signify their constitutional option on Bills presented to them for assent. The Legislature of a State is a supreme authority in the matter of legislations. Therefore, to ensure that the object with which the Bill is passed by the State Legislature to meet the aspirations of the people of the State, it is necessary that some time limit should be prescribed within which this process of giving or withholding of assent be completed. Therefore, it is suggested that a decision to give assent or withhold the assent as the case may be shall be taken either by the Governor or the President within fourteen days of the presentation of such a Bill.

Hence this Amendment.

K. C. KONDAIAH

**III**

BILL NO. I OF 2001

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2001.

(2) It shall come into force at once.

2. In clause (2) of article 276 of the Constitution for the words “two thousand and five hundred rupees” the words “six thousand rupees” shall be substituted.

Short title and  
commence-  
ment.

Amendment of  
article 276.

**STATEMENT OF OBJECTS AND REASONS**

Karnataka is globally known as the Silicon State of India. In Karnataka, large number of Information Technology and software professionals have been carrying on their profession and earning huge amounts. The State Government has to provide various infrastructural facilities for setting up corporate bodies and software companies in the State. Therefore, it is found necessary to enhance the maximum limit for levying professional tax to rupees six thousand per annum from the present rupees two thousand five hundred per annum.

Hence this Bill.

**K. C. KONDAIAH**

## IV

## BILL NO. X OF 2001

*A Bill to provide for the complete freedom to earn livelihood to the hawkers of various household items including vegetables, fruits, utensils, wares and clothes etc., vendors of food items and other small items such as newspapers, books, tools etc., cycle rickshaw pullers and roadside mechanics of various items by way of prohibiting the police and officials of local bodies to impound or take away their wares and stuff so as to enable the poor and unemployed citizens to feed their families and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Hawkers, Vendors, Rickshaw Pullers and Roadside Mechanics (Freedom of Earning Livelihood) Act, 2001.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of a State the Government of that State and in all other cases the Central Government.

(b) "hawker" means a person who sells household items such as vegetables, fruits, clothes, utensils, food items, dry fruits etc. by going from house to house or street to street hawking on cart, bicycle basket or any other mode;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "rickshaw puller" means a person who physically pulls a cycle rickshaw of any kind to earn his livelihood;

(e) "roadside mechanic" include the person repairing cycle, cycle rickshaw, scooters, motor cycles, cars and other motorised vehicles, person repairing footwear, utensils and other wares by the roadside or under the tree without erecting any permanent structure at the site;

(f) "vendor" means a person who sells food items, fruits, vegetables and other small items of household from a stall or place in the open air.

Freedom to  
earning  
livelihood.

3. Notwithstanding anything contained in any other law for the time being in force, the hawkers, rickshaw pullers, roadside mechanics, vendors and persons carrying similar other vocations shall have complete freedom to earn their livelihood without any hindrance from any authority whatsoever including those of Police and Local Self Government.

Local Self  
Government  
authorities not  
to impound the  
articles etc.

4. Notwithstanding anything contained in any other law for the time being in force, no authority of any Local Self Government, such as Municipalities, Municipal Corporations, Municipal Councils or by whatever name called, shall impound the articles, tools, carts, cycle rickshaws etc. belonging to the hawkers, rickshaw pullers, roadside mechanics, vendors, as the case may be.

Certain  
conditions to  
be followed by  
hawkers etc.

5. For earning livelihood under the provisions of this Act;

(a) a hawker shall not hawk any article which is injurious to health and he shall not obstruct the public place and traffic flow;

(b) a rickshaw puller and roadside mechanic shall not obstruct the flow of traffic of vehicles and pedestrians, as the case may be;

(c) a vendor shall not sell anything which is injurious to health.

Appropriate  
Government  
to ensure  
freedom of  
earning  
livelihood.

6. It shall be the duty of the appropriate Government to ensure strict compliance of the provisions of this Act in such manner as may be prescribed.

Overriding  
effect of the  
Act.

7. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Power to give  
directions.

8. The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions of this Act.

Power to  
remove  
difficulties.

9. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

Power to make  
rules.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.



### STATEMENT OF OBJECTS AND REASONS

After the population explosion, the worst problem our country is facing today is ever growing unemployment scenario. The number of unemployed is growing menacingly. Government services have become scarce due to trimming of Government Departments. Public Sector Undertakings are resorting to Voluntary Retirement Schemes and moreover they are being disinvested for ultimate privatisation hence there are no jobs in the Public Sector Undertakings. Agriculture which used to be biggest employment provider is also undergoing slump because of unremunerative price structure and fall in prices of commodities. The Private Sector is relying more and more on computers. Thus the employment generation is not commensurate with the growing population.

Self-employment seems to be the only way to tackle unemployment but it requires finance and every one can not afford to have that. Some citizens try to earn their livelihood through rickshaw pulling or by hawking or vending articles or repairing motor vehicles, cycles, footwear etc. by the roadside but most of them are hounded by local police and Municipal employees. They have to grease the palms of the police and Municipal employees or their articles and other things are taken away and impounded. Thus they remain under threat and can not earn their livelihood with freedom. When state can not provide employment to these poor people they should not be denied their right to earn livelihood. So it is felt that there should be complete freedom for these poor people to earn their livelihood and there should be no interference from police or local authorities in their vocation.

Hence this Bill.

DR. DASARI NARAYANA RAO

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

## V

## BILL NO. XXIII OF 2001

*A Bill to provide for the prevention of exploitation and abuse including sexual abuse of children of parents living on pavements of Urban areas and of sex workers languishing in red light areas and for welfare measures to be undertaken by the State for such children by establishing special care homes for them and making provisions for free education including vocational education and employment and other amenities and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

Short title and  
commence-  
ment.

1. (1) This Act may be called the Children of Pavement Dwellers and Sex Workers (Prevention of Abuse and Welfare Measures) Act, 2001.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

Definitions.

2. In this Act, unless the Context otherwise requires,—

(a) “appropriate Government” means in the case of a State the State Government and in the case of Union Territory the Central Government;

(b) “child” means a boy or girl who has not attained the age of fifteen years;

(c) "pavement dweller" means person living on the pavement of road, street or in the open space;

(d) "prescribed" means prescribed by rules made under this Act;

104 of 1956.

(e) "sex worker" shall have the same meaning assigned to the term "prostitute" under the Immoral Traffic (Prevention) Act, 1956;

(f) "special care Homes" means an institution established or certified as such by the appropriate Government under section 4.

3. (1) Notwithstanding anything contained in any other law for the time being in force, the appropriate Government shall take custody of every child born of or accompanying a pavement dweller or a sex worker, as the case may be, in such manner as may be prescribed.

Appropriate Government to take custody of children born of pavement dwellers and sex workers.

(2) Every child taken custody of under sub-section (1) shall be admitted to Special Care Homes, as provided under section 4, in such manner as may be prescribed.

4. (1) The appropriate Government shall establish and maintain such number of Special Care Homes as may be necessary for the purposes of this Act:

Establishment of Special Care Homes.

Provided that where the appropriate Government is satisfied that any Institution run by any Non-Governmental Organisation (NGO) is fit for the reception of the children under this Act, it may recognise such an institution as special care Home for the purposes of this Act.

(2) Every Special Care Home or an institution recognised as such, as the case may be, shall not only provide the child with free accommodation, boarding, lodging, meals, dresses and other necessities for his maintenance and facilities for education, vocational training and rehabilitation, but shall also provide him with facilities for the development of his character and career and such other functions as may be prescribed to ensure all-round growth and development of his personality.

5. (1) The appropriate Government may, by rules made under this Act, provide for the conditions for the institutions of NGO's including the standards and nature of services to be maintained by them and the circumstances under which and the manner in which the recognition of institution of NGO's may be granted or withdrawn.

Standards for non Government institutions.

(2) The rules made under sub-section (1) may also provide for the classification and separation of children on the basis of sex, age and atmosphere prevalent in their case.

6. The appropriate Government shall provide adequate grants-in-aid to the institutions of NGO's recognised under this Act.

Grants-in-aid.

7. The Central Government shall, after due appropriation made by law by Parliament, provide adequate funds to the States for the implementation of this Act.

Central Government to provide funds.

8. Notwithstanding anything contained in any other law for the time being in force, whoever having charge of or control over a child governed by the provisions of this Act assaults, abandons, exposes or wilfully neglects the child in a manner likely to cause such child unnecessary mental or physical suffering shall be punishable with imprisonment which shall not be less than two years but which may extend to five years and also with fine which may extend to fifty thousand rupees.

Penalty for cruelty to children.

15 of 1860.

9. Notwithstanding anything contained in the Indian Penal Code, whoever sexually abuses any child governed by the provisions of this Act, shall be punished with death.

Penalty for sexual abuse of children.

10. Whoever forces any child, governed by the provisions of this Act to beg shall be punishable with imprisonment which shall not be less than two years but may extend to five years and also with fine which may extend to fifty thousand rupees.

Penalty for forcing child to beg.

Constitution of  
Welfare Fund.

11. (1) The Central Government shall, as soon as may be, by notification in the Official Gazette, constitute a Welfare Fund under such name as it may think fit for the welfare and rehabilitation of children under this Act and provide initial fund of rupees two hundred crores after due appropriation made by Parliament by Law in this behalf and thereafter the Central and State Government shall contribute to the Fund in such proportion and in such manner as may be prescribed.

(2) There shall be credited to the Fund such voluntary donations, contributions or subscriptions as may be made by any individual or organisation.

Over-riding  
effect of the  
Act.

12. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act.

Power to  
remove  
difficulties.

13. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

Power to make  
rules.

14. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this act.

### STATEMENT OF OBJECTS AND REASONS

It is said that prostitution is the oldest profession in the World and this profession is going on consistently throughout the world even today despite being illegal in many parts of the world. In our country also there are lakhs of sex workers in the flesh trade and despite their best efforts not to conceive, thousands of unfortunate children are born to these sex workers who are forced by circumstances to live in the inhuman surroundings and atmosphere of brothels. Here the boy ultimately becomes a pimp and the hapless girl a sex worker and that is the destiny of these innocent and unfortunate children.

Similarly many people due to acute unemployment and abject poverty are forced to live on pavements and sustain on begging, ragpicking and even stealing, cheating etc. Children are born on these pavements and become part and parcel of the vicious circle of the pavement. They too ultimately become beggars, ragpickers, pickpockets and other anti social elements.

These children too, like other children are the future citizens of our country and it is our duty to make them good citizens. Ours being a welfare State, the Central and State Governments have to ensure that these children grow in good atmosphere and their future becomes safe. They are not exploited and they do not become the victims of lust. The Government must take care of them, open special care homes for them and provide all requisite facilities for their proper growth and advancement in life.

Hence this Bill.

DR. DASARI NARAYANA RAO

### FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the establishment of Special Care Homes. Clause 7 prescribes that Central Governments will provide funds to the States. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees two hundred crores will involve as recurring expenditure per annum.

A sum of rupees five hundred crores may also involve as non-recurring expenditure to construct Special Care Homes in the country.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5(1) gives power to the appropriate Government to make rules for governing the NGO institutions. Clause 14 empowers the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

## VI

BILL No. XLV OF 2001

*A Bill to provide for the one time security and development Bond to be issued by the State in favour of the girl child born of parents living below poverty line to mature at the time of her marriage and settlement in life of her choice and for free and compulsory minimum education including technical and vocational education and other welfare measures to be ensured by the State for her advancement and development and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Girl Child Born of Parents Living Below Poverty Line (Special Provisions For Upbringing and Welfare) Act, 2001.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of a State, the Government of that State and in other cases the Central Government;

(b) "Parents below poverty lines" means those couples who have been enumerated as living below poverty line either by the Central Planning Commission or by the State Government or those whose monthly income from all sources is not more than five hundred rupees, as the case may be;

(c) "girl child" means any female human being below the age of eighteen years;

(d) "Prescribed" means prescribed by rules made under this Act.

Appropriate Government to give one time security and development bond to the Girl Child born of parents living below poverty line.

3. (1) The appropriate Government shall give an one time Security and Development Bond of the value of not less than five thousand rupees to every girl child born of parents living below poverty line within its territorial jurisdiction at the time when the girl child enters into second year of her age through a Governmental agency as may be determined by the concerned Government;

(2) The Security and Development Bond referred to in sub-section (1) shall mature when the girl child attains the age of majority and her marriage is fixed or she decides to start her vocational career, as the case may be, and the payment shall be made to her in such manner as may be prescribed.

Educational and other facilities.

4. The appropriate Government shall provide to every girl child born of parents living below the poverty line—

(a) free and compulsory education including technical education at the level the girl child desires to pursue;

(b) study materials like books, note books, stationery, uniforms, shoes, socks etc. free of cost;

(c) hostel and boarding and lodging facilities wherever necessary at Government expenses;

(d) scholarship in deserving cases;

(e) nutritious meals and medical care free of cost;

(f) vocational training of her choice, free of cost;

(g) proper and gainful employment after completion of education or training in any vocation.

Central Government to make available requisite funds.

5. The Central Government shall after due appropriation made by Parliament by Law in this behalf, make available to the States requisite funds for the purposes of this Act.

Overriding effect of the Act.

6. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other Law for the time being in force but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force giving benefits to the girl child.

Power to make rules.

7. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.



## STATEMENT OF OBJECTS AND REASONS

The girl child is most unwanted in our Country and in that sense in most parts of the World. Most families do not want a daughter in the family despite that daughters do born in the families generally to suffer. The condition of girl child born to parents living below the poverty line is more awsome and pathetic. She grows in abject poverty and has to live without basic necessities of the life hand to mouth without even clothes to cover her body. As a result she is forced to become a ragpicker, beggar a petty thief or even a criminal and finally end in a brothel. Thus she suffers exploitation at every stage of her life and education, good vocation and normal good life are day dreams for such a hapless girl child.

Our constitution has adopted the Country as a Welfare State and it has been pledged that there will be no discrimination on ground of sex, religion, caste, creed in the country and there will be equality of opportunities for all. Hence the State has to come forward for the development of the hapless girl child born of parents living below the poverty line. It has been proposed in this Bill that Government should give security or Development Bond of minimum denomination value of rupees Five Thousand to every girl child on her first birth anniversary which will mature when she attains the age of majority and enter into wedlock or starts her own venture to settle in life. By then this Bond amount will increase manifold and help her settle down in life. Apart from this the girl child should be given compulsory and free education, free books, dress, nutrition, medical care, vocational training, employment opportunities etc. for her overall development.

Hence this Bill.

DR. DASARI NARAYANA RAO.

### FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that the appropriate Government shall give an one time Security and Development Bond to the girl child born of parents living below the poverty line. Clause 4 provides for educational and other facilities for such girl child. Clause 5 provides that Central Government will make funds available for the purposes of this Bill. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of Rupees Five hundred Crores may involve as recurring expenditure per annum.

No non-recurring expenditure is likely to be involved.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill gives powers to the Central Government to make rules for the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

## VII

## BILL NO. XXIV OF 2001

*A Bill to prohibit the publication of pre-election survey of the elections to the Lok Sabha and Legislative Assemblies of the States and for matters connected therewith.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Prohibition of Publication of Pre-Election Survey Act, 2001.

Short title and  
commence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires:—

Definitions.

(a) "election" means an election to fill a seat or seats in the House of the People in the Legislative Assembly in a State

(b) "express" means and includes expression through printing or publication in a newspaper or a book or telecast/broadcast through television/radio network or internet or by other means to which the public has access;

(c) "person" includes agency, organization or a body corporate; and

(d) "process of election" means the final phase of casting of votes by the eligible voters in their respective constituencies.

Prohibition of  
publication of  
pre-election  
survey.

3. No person shall express or cause to be expressed any opinion based on a result of any survey by whatever name called, about the likely result of any election, before the completion of process of election.

Penalty.

4. If any person contravenes the provisions of section 3:—

(i) he shall be punished with imprisonment for a term not exceeding five years; and

(ii) the registration or licence given to such an organization or agency under any law for the time being in force, shall be revoked.

Over-riding  
effect of the  
Act.

5. This Act shall have effect notwithstanding anything contrary contained in any other law for the time being in force or any decree or judgement or order by any court or authority having judicial powers.

## STATEMENT OF OBJECTS AND REASONS

Ours is a very large country and therefore, elections to Lok Sabha and State Legislatures are held in many phases. It has been observed that various agencies start publishing pre-poll survey about the victory or defeat of political parties on the completion of the first phase of the election itself. As a result, there is every possibility that the voters in other constituencies where elections are to be held, can be influenced especially because a majority of them are illiterate. Keeping this fact in view, the Election Commission had put a ban on such surveys. However, the court struck it down and as a result thereof various agencies started publishing their pre-poll survey again.

Hence it is necessary to enact a legislation so that the voters are not influenced by these surveys and the forecast of election results in one area do not adversely affect the voting pattern in the other areas.

The Bill seeks to achieve this object.

P. PRABHAKAR REDDY.

**VIII****BILL No. XXVII OF 2001*****A Bill to regulate the utilisation of foreign aid and for matters incidental or consequential thereto***

BE it enacted by Parliament in the Fifty-second of the Republic of India as follows:—

Short title.

1. This Act may be called the Foreign Aid Fund of India (Regulation) Act, 2001.

Definitions.

2. In this Act, unless the context otherwise requires:—

(a) "fund" means the Foreign Aid Fund of India set up under section 3;

(b) "prescribed" means prescribed by rules made under this Act.

The Foreign  
Aid Fund of  
India.

3. (1) The Central Government shall, as soon as may be after the commencement of this Act set up a Fund to be known as "The Foreign Aid Fund of India", into which shall be credited all monies received as from aid or assistance or donation or contribution from any foreign country or any organisation or an individual or an institution in a foreign country or United Nations Organisation for providing relief to people affected by any natural calamity or mishap.

(2) The fund shall be administered in such manner as may be prescribed.

4. (1) The fund shall be utilised—

Utilization of  
the Fund.

(a) for payment of compensation to victims of natural calamities or mishaps;

(b) for providing assistance to State Government for carrying out relief and rehabilitation measures in the event of any natural calamity or mishap; and

(c) for any other purpose as may be prescribed.

(2) The terms and conditions for the grant of money out of the fund and the amount to be provided shall be such as may be prescribed.

5. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make  
rules.

6. The audit of the fund shall be carried out by the Comptroller and Auditor General of India or person authorised by him in this behalf.

Audit of the  
Fund.

**STATEMENT OF OBJECTS AND REASONS**

Our country receives from time to time huge assistance and donations from foreign countries and United Nations Organisation to meet the unforeseen expenditure to provide relief measures to people affected by natural calamities and other mishaps. However since the received are not credited into any central pool, the Government do not seem to have any effective control with regard thereto and there are occasions when the money is not utilised for the purposes for which they were received.

It is, therefore, desirable to create a Fund to take care of the donations so received and make statutory provision for the regulation of the Fund. It is also necessary to subject the Fund to the audit control of the Comptroller and Auditor General of India.

The Bill seeks to achieve these objects.

P. PRABHAKAR REDDY.

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**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 5 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. Since the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.



## IX

## BILL No. XXVI OF 2001

*A Bill further to amend the Securities and Exchange Board of India Act, 1992.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Securities and Exchange Board of India (Amendment) Act, 2001. Short title.

2. For section 4 of the Securities and Exchange Board of India Act, 1992, the following shall be substituted namely:— Substitution of new section for section 4.

“4(1) The Board shall consist of the following seven members, namely:— Management of the Board.

(a) a Chairman;

(b) two members from amongst the officials of the Ministries of the Central Government dealing with Finance and Law;

(c) one member from amongst the officials of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

(d) one member from a recognised Stock Exchange;

(e) one member representing investors; and

(f) one member representing the Industry.

(2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

(3) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by the Board.

(4) The Chairman and members referred to in clauses (a), (d), (e) and (f) of sub-section (1) shall be appointed by the Central Government and members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank of India respectively.

(5) The Chairman and the other members referred to in sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board."

### STATEMENT OF OBJECTS AND REASONS

The Securities and Exchange Board of India was set up in 1992 to regulate the activities of capital market. One of the main objects of the Board is to protect the interests of small investors. At present, there is no representative of the small investors in the Board. It is felt that for more efficient functioning of the Board it is necessary to strengthen the composition of the Board. It is accordingly proposed to include one representative each from a recognised stock exchange, small investors and the industry as the members of the Board. It is also proposed to carry out some consequential amendments in Section 4 of the Act. The Bill seeks to achieve the above objective.

P. PRABHAKAR REDDY.

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### FINANCIAL MEMORANDUM

Clause 2 of the Bill makes provisions for appointment of one more member. This will involve expenditure of about rupees four lakh per annum from Consolidated Fund of India as a recurring expenditure.

It will also involve a non-recurring expenditure of rupees five lakh.

## X

BILL No. XXXII OF 2001

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

Short title and  
commence-  
ment.

1. (1) This Act may be called the Constitution (Amendment) Act, 2001.

(2) It shall come into force at once.

Amendment  
of article 74.

2. In article 74 of the Constitution, in clause (1):—

(i) Before the existing proviso, the following proviso shall be inserted, namely:—

“Provided that the strength of the Council of Ministers shall not exceed ten percent of the combined total membership of the House of the People and the Council of States.”

(ii) in the existing proviso after the word “Provided” the word “further” shall be inserted.

Amendment  
of article 75.

3. In article 75 of the Constitution, to Clause (1) the following proviso shall be added, namely:—

“Provided that the President shall not appoint any Member of Parliament as a Minister who has left the Political Party on whose symbol he was elected to either House of Parliament and has joined or formed another Political Party, as the case may be.”

4. In article 163 of the Constitution, to Clause (1) the following proviso shall be added, namely:—

Amendment  
of article 163.

“Provided that the strength of the Council of Ministers shall not exceed ten percent of the total membership of the Legislative Assembly of the State where unicameral Legislature exists and the combined total membership of the Legislative Assembly and Legislative Council where bicameral Legislature exists.”

5. In article 164 of the Constitution, in clause (1),—

Amendment of  
article 164.

(i) before the existing proviso, the following proviso shall be inserted, namely:—

“Provided that the Governor shall not appoint any Member of the State Legislature as a Minister who has left the Political Party on whose symbol he was elected to either House of the State Legislature and has joined or formed another Political Party, as the case may be.

(ii) in the existing proviso after the word “Provided” the word “further” shall be inserted.

**STATEMENT OF OBJECTS AND REASONS**

Presently there is no constitutional limit prescribed on the size of the Council of Ministers at the Union level or at the State level. As a result many States have very big Council of Ministers like the States of U.P. and Bihar. Many a times Union Council of Ministers is also very big. Such big Council of Ministers become financial burden on the exchequer. It is therefore necessary to check such a trend by prescribing the limit to the size of Council of Ministers.

Similarly lure of Ministership is one of the foremost reasons for defections by the legislator or group of legislators which has become the menace of our democracy and unfortunately the anti defection law has failed to curb this menace. If the defectors are denied Ministership this menace can be contained to some extent.

Hence this Bill.

R. S. GAVAI.

**XI****BILL NO. LIII OF 2001***A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 2001.

Short title.

2. In Part V of the Constitution after Chapter III, the following Chapter shall be inserted, namely:—

Insertion of  
New Chapter  
IIIA.

**CHAPTER IIIA—*The National Judicial Commission***

123A. (1) There shall be a National Judicial Commission (hereinafter referred to in this Chapter as “the Commission”) to recommend the appointment and transfer and removal of Judges and Chief Justices of the High Courts and the appointment and removal of Judges and Chief Justice of the Supreme Court.

Establishment  
of National  
Judicial  
Commission.

(2) The Commission shall consist of a Chairman and four other members who shall be appointed by the President by warrant under his hand and seal in the following manner:—

(i) The Chairman of the Commission on the recommendation of a collegium consisting of all sitting judges of the Supreme Court;

(ii) one member of the Commission on the recommendation of a collegium consisting of the Chief Justices of High Courts;

(iii) one member on the recommendation of the Union Council of Ministers;

(iv) one member on the recommendation of the Leader of the Opposition in the Lok Sabha who shall act in consultation with the Leaders of other Opposition Parties in both Houses of Parliament for the purpose; and

(v) one member on the recommendation of a collegium consisting of all the members of the Bar Council of India.

Qualification  
for member-  
ship.

123B. (1) A person shall not be qualified for appointment as Chairman or member of the Commission unless he—

(a) is a citizen of India;

(b) has completed the age of fifty-five years;

(c) has been a judge of the Supreme Court or a judge of a High Court; or

(d) has been enrolled as for at least ten years a senior advocate in a High Court or the Supreme Court.

(2) The Chairman and members of the Commission shall have a fixed tenure of five years, but shall be eligible for a second term. Each vacancy shall be filled by appointment in the manner specified in this article 123A(2).

Resignation  
and removal  
etc. of  
members.

123C. (a) A member may, by writing under his hand addressed to the President, resign his office;

(b) A member may be removed from his office on the unanimous recommendation of all the other members of the Commission on the ground of misconduct after giving him an opportunity of being heard.

Bar to hold  
any other  
public office  
or practice in  
any Court.

123D. A member of the Commission, after completion of his term, shall not hold any other public office or shall practice in any Court or do any chamber practice.

Salaries and  
allowances  
etc. of  
chairman and  
members.

123E. (i) The Chairman and members of the Commission shall be paid such salaries and allowances as may be payable respectively to the Chief Justice and other judges of the Supreme Court:

(ii) Every member of the Commission shall be entitled to such privileges and rights in respect of leave of absence and pension as are available to the Judges of the Supreme Court:

Provided that neither the salary nor the allowances nor the privileges nor rights in respect of leave of absence and pension of a member shall be varied to his disadvantage after his appointment.

Power to make  
rules.

123F. The Commission may make rules for regulating the procedure of its own working.

Officer and  
Staff of the  
Commission.

123G. The President may, after consultation with the Commission, make rules regulating the recruitment, and the conditions of service of persons appointed, to the Office of the Commission and until such rules are made the Central Government



shall make available such number of officers and staff as may be deemed necessary by the Commission.

**123H. The administrative expenses of the office of the Commission, including all salaries, allowances and pensions payable to, or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.**

Administrative expenses of the Commission.

**123I. The seat of the Commission shall be at New Delhi.**

Headquarter of the Commission.

3. For Article 124 of the Constitution, the following Article shall be substituted, namely:—

Substitution of article 124.

**“124. (1) There shall be Supreme Court of India consisting of a Chief Justice of India and such number of other Judges as the Parliament may by law prescribe.”**

Establishment and Constitution of Supreme Court.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Commission and shall hold office until he attains the age of sixty five years. The Chief Justice of India shall always be appointed by seniority from amongst the judges of the Supreme Court, unless the Commission unanimously recommends otherwise.

Before making any recommendation for the appointment of a judge to the Supreme Court, the National Judicial Commission may consult the Chief Justice of India and other judges of the Supreme Court. However in case of a disagreement the view of the Commission shall be final in the matter.

(3) A judge may, by writing under his hand addressed to the President, resign his office.

(4) If any dispute arises about the age of a judge of the Supreme Court, it shall be determined by the National Judicial Commission whose decision shall be final in the matter.

(5) A person shall not be qualified for appointment as a judge of the Supreme Court unless he—

(a) is a citizen of India;

(b) has been for at least 15 years a judge of a High Court or of two or more High Courts in succession; or

(c) has been for at least 15 years an advocate of a High Court or of two or more High Courts in succession; or

(d) is, in the opinion of the National Judicial Commission, a distinguished jurist.

*Explanation:*

In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held Judicial office not inferior to that of a district judge after he became an advocate shall be included.

(6) A Judge shall not be removed from his office except by an order of the President passed on the recommendation of the National Judicial Commission which shall be binding on the President.

(7) (a) A judge of the Supreme Court shall be removed from his office on the recommendations of the National Judicial Commission only on the finding of misbehaviour or incapacity of the Judge arrived at after an enquiry by a Committee of three retired judges of the Supreme Court, to be selected by the National Judicial Commission to enquire into charges of misbehaviour or incapacity against the judge. The rules of procedure for framing the charges, constituting the Inquiry Committee and for the Inquiry shall be framed by the National Judicial Commission.

(b) Once the Inquiry Committee is constituted to enquire into the charges against a judge, he shall not discharge any judicial function.

(8) Every person appointed to be judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(9) No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India. He shall not be appointed to any office of profit, including a Commission of Inquiry by the Government at the Centre or State, except on the recommendation of the National Judicial Commission."

Amendment  
of article 126.

4. In Article 126 of the Constitution,—for the words, "as the President may appoint for the purpose", the words "as the President may appoint on the recommendation of the National Judicial Commission" shall be substituted.

Substitution of  
article 217.

5. For Article 217 of the constitution, the following Article shall be substituted, namely:—

Appointment  
and Condition  
of the Office  
of a Judge of a  
High Court.

"217. (1) Every judge of the High Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Commission and shall hold office until he attains the age of 62 years. The Chief Justice of a High Court shall always be appointed by seniority from amongst the sitting judges of that High Court, unless the National Judicial Commission unanimously recommends otherwise. The President shall be bound by the advice of the National Judicial Commission.

(2) The National Judicial Commission shall not make its recommendation to the President until at least two weeks after the name of the proposed appointee has been duly notified to the public in the press by the National Judicial Commission.

(3) A Judge may, by writing under his hand addressed to the President, resign his office.

(4) If any dispute arises about the age of a judge of the High Court, it shall be determined by the National Judicial Commission whose decision shall be final.

(5) A person shall not be qualified for appointment as a judge of the High Court unless he—

(a) is a citizen of India;

(b) has held for at least 10 years a judicial office in the territory of India;

or

(c) has been for at least 10 years an advocate of a High Court or of two or more High Courts in succession; or

(d) is, in the opinion of the National Judicial Commission, a distinguished jurist.

(6) (a) A judge shall not be removed from his office except by an order of the President passed on the recommendation of the National Judicial Commission which shall be binding on the President.

(b) the National Judicial Commission a judge of the High Court shall be removed from his office on the recommendation of only on the finding of misbehaviour or incapacity arrived at after an Inquiry Committee of 3 retired judges of the Supreme Court or High Court constituted by the National Judicial Commission to inquire into charges of misbehaviour or incapacity against the judge. The rules of procedure for framing the charges, constituting the Inquiry Committee and for the Inquiry shall be framed by the National Judicial Commission."

6. For Article 220 of the Constitution the following Article shall be substituted, namely:—

Substitution of article 220.

**“220.** No person who, after the commencement of this Constitution has held office as a judge of a High Court shall plead or act in any Court or before any authority; in India except the Supreme Court and the other High Courts. He shall not be appointed to any office of profit, including a Commission of Inquiry by the Government, except on the recommendation of the National Judicial Commission.”

Restriction on practice after being a permanent Judge.

7. In Article 222, for clause (1) the following clause shall be substituted, namely:—

Amendment of article 222.

**“(1)** A judge of a High Court may be transferred from one High Court to another High Court by the President on the recommendation of the National Judicial Commission which shall be binding on the President.”

### STATEMENT OF OBJECTS AND REASONS

A competent, independent and impartial judiciary is vital for sustaining the constitutional democratic system of governance. Our Constitution makers did try to ensure independence of higher judiciary to enable it to work impartially without fear or favour. However, experience has shown that the system of appointment, promotion, transfer of judges in the higher judiciary and their removal for misconduct is deficient, inadequate and lacks transparency. Inordinate delays in appointment of judges and very often selection of inappropriate persons has contributed to long delays in the decision of cases to the detriment of the litigant public.

Complaints are also heard about the competence and integrity of judges manning the higher judiciary. Further the procedure for removal of judges for their misconduct is cumbersome, impractical and ineffective and fails to ensure their accountability. It is, therefore, not surprising that the system has given rise to wide spread public perception that there is decline in the quality of the higher judiciary in the country besides perceptible decline in the quality of administration of justice. Such a public perception is bound to eat into the vitals of the Constitutional system of governance.

As a remedial measure it is necessary to set up a high powered multimember National Judicial Commission entrusted with the task of—

- (i) selecting capable persons of proven integrity, honesty and impartiality for appointment in the higher judiciary;
- (ii) ensuring elimination of inordinate delays in selection and appointment of judges;
- (iii) ensuring transparency in promotion and transfer of judges; and
- (iv) ensuring effective removal of errant judges for their misconduct.

For achieving the aforesaid objectives an amendment to the Constitution is required. Hence this Bill.

S. RAMACHANDRAN PILLAI.

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### FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the establishment of a National Judicial Commission. The Bill, if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of Rs. three crores may involve as recurring expenditure per annum.

A sum of Rs. Ten crores may also be involved as non recurring expenditure.

**XII****BILL NO. LII OF 2001***A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-second year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2001.

Short title and  
commence-  
ment.

(2) It shall come into force at once.

2. In article 75 of the Constitution, to clause (5), the following proviso shall be added, namely:—

Amendment  
of article 75.

“Provided that the provisions of this clause shall be inoperative where a citizen,—

(a) is disqualified under article 102 of the Constitution;

(b) having denied nomination for contesting election to either House of Parliament by a Returning Officer under the Election laws for the time being in force; and

(c) who has been convicted by a Court of Law in any criminal case where the penalty is more than six months."

Amendment of article 84. 3. In article 84 of the Constitution, after clause (b) the following shall be inserted, namely:—

"(ba) who has not been convicted by a trial or appellate Court of Law on charges of corruption or abuse of authority or offences of moral turpitude or militant and terrorist activities".

Amendment of article 99. 4. To article 99 of the Constitution, the following proviso shall be added, namely:—

"Provided that the member who is to be administered such oath of office and of secrecy shall not be a convict by any trial or appellate Court on charges of corruption or abuse or authority or terrorist and militant acts or acts of moral turpitude".

Amendment of article 124. 5. In article 124 of the Constitution, to clause (6), the following proviso shall be added, namely:—

"Provided that the person who is to be administered such oath of office and of secrecy shall not be a convict by any trial or appellate Court on charges of corruption or abuse or authority or terrorist and militant acts or acts of moral turpitude".

Amendment of article 148. 6. In article 148 of the Constitution, to clause (2), the following proviso shall be added, namely:—

"Provided that the person who is to be administered such oath of office and of secrecy shall not be a convict by any trial or appellate Court on charges of corruption or abuse or authority or terrorist and militant acts or acts of moral turpitude".

Amendment of article 164. 7. In article 164 of the Constitution, to clause (4), the following proviso shall be added, namely:—

Provided that the provisions of this clause shall be inoperative where a citizen,—

(a) is disqualified under article 191 of the Constitution;

(b) having denied nomination for contesting election to either House of State Legislature by a Returning Officer under the Election Laws for the time being in force; and

(c) who has been convicted by a Court of Law in any criminal case where the penalty is more than six months.

Amendment of article 173. 8. In article 173 of the Constitution, after clause (b) the following shall be inserted, namely:—

"(ba) who has not been convicted by a trial or appellate Court of Law on charges of corruption or abuse of authority or offences of moral turpitude or militant and terrorist activities".

Amendment of article 188. 9. To article 188 of the Constitution, the following proviso shall be added, namely:—

"Provided that the member who is to be administered such oath of office and secrecy shall not be a convict by any trial or appellate Court on charges of corruption or abuse or authority or terrorist and militant acts or acts of moral turpitude."

Amendment of article 219. 10. To article 219 of the Constitution, the following proviso shall be added, namely:—

"Provided that the person who is to be administered such oath of office and of secrecy shall not be a convict by any trial or appellate Court on charges of corruption or abuse or authority or terrorist and militant acts or acts of moral turpitude".

## STATEMENT OF OBJECTS AND REASONS

Democracy is defined as a form of government, which is of the people, by the people and for the people. But no democracy can be allowed to be taken over by criminals even though they are elected as peoples' representatives because of certain lacunae in election laws. In our country, more and more persons accused and convicted for serious crimes seek to be, and are, elected peoples' representatives without inviting moral protest and even enter upon high public offices such as Member of legislature or Minister. Such instances are increasing every day at the Centre as well as in States, irrespective of the fact that not every one can stand for election. Because there is an embargo on grounds of age, citizenship, unsoundness of mind, insolvency, holding any office of profit and also on the ground of criminality. The scheme of disqualifications on the grounds of criminal backdrop as laid down in Section 8 of the Representatives of the People Act, 1951 is elaborate but not inherently complicated.

Three kinds of criminal background invite disqualification. In the first most serious category-I, those found guilty of certain listed anti-social and anti-national offences are disqualified for six years from the date of conviction [Section 8(1)]. The second socially serious category-II includes those sentenced to more than six months for offences relating to hoarding, profiteering, adulteration of food and drugs, dowry and sati. They are disqualified from the date of conviction for six years after release from prison [Section 8(2)]. The third general category-III consists of persons convicted and sentenced to imprisonment for at least two years who are disqualified in the same terms as the second category [Section 8(3)]. The most serious category requires only conviction. The less serious and general category requires conviction and also different levels of sentence. But there is a statutory immunity under Section 8(4) that a sitting MLA or MP is not disqualified so long his appeal against his conviction and sentence is pending.

However it is noted with dismay that people even though convicted by trial court occupy the post of Chief Minister and Minister on the erroneous assumption that their appeal is pending. Further the enabling provision under Article 75(5) and 164(4) to continue to hold office of Chief Minister or Minister for a period of six months without being a Member of either House irrespective of conviction is also being sought to be abused. It is also a disturbing feature that before entering upon the office of Member of legislature or Minister at the Centre or in the State, a person even convicted for serious offences are administered oath that he will bear true faith and allegiance to the Constitution and uphold it. How a law breaker can become the law protector? Democracy functions on the trust of the people and the founding fathers of our Constitution never expected that a day would come when convicted persons would try to become peoples' representative and seek high office.

[Hence this Bill to obviate such disturbing trend in public life and polity of our nation.]

Hence this Bill.

RAVI SHANKAR PRASAD, M.P.

R. C. TRIPATHI,  
*Secretary-General.*

